

STATEMENT OF PURPOSE

RS 23292

Section 54-2054 of the License Law prohibits licensees from fee-splitting with unlicensed persons, and also prohibits sales associates from accepting an earned sales commission, fee or other compensation from anyone other than their own broker. Subsection 54-2054(2) provides an exemption for payment by the broker to a legal business entity owned exclusively by active Idaho licensees. This amendment seeks to clarify the scope of that exemption to ensure against misuse and accommodate common industry practices.

FISCAL NOTE

None to the General Fund. None to the agency's Special Real Estate Account. None to any state or local political subdivision.

Contact

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Statement of Purpose/Fiscal Note

Bill No.



Sixty-third Legislature

LEGISLATURE OF THE STATE OF IDAHO



First Regular Session - 2015

IN THE _____

BILL NO. _____

BY _____

AN ACT

RELATING TO IDAHO REAL ESTATE LICENSE LAW; AMENDING SECTION 54-2054, IDAHO CODE, TO REVISE PROVISIONS RELATING TO FEE-SPLITTING WITH UNLICENSED PERSONS AND TO REVISE THE REQUIREMENT THAT ALL FEES MUST BE PAID THROUGH A BROKER.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 54-2054, Idaho Code, be, and the same is hereby amended to read as follows:

54-2054. COMPENSATION, COMMISSIONS AND FEES -- PROHIBITED CONDUCT. (1) Court action for fee collection. No person engaged in the business or acting in the capacity of real estate broker or salesperson in Idaho shall bring or maintain any action in the courts for the collection of a fee, commission or other compensation for the performance of any acts requiring a real estate license as provided in section 54-2002, Idaho Code, without alleging and proving that such person was an actively licensed broker or salesperson in Idaho at the time the alleged cause of action arose.

(2) Fee-splitting with unlicensed persons prohibited. Unless otherwise allowed by statute or rule, a real estate broker, associate broker or salesperson licensed in the state of Idaho shall not pay any part or share of a commission, fee or compensation received in the licensee's capacity as such in a regulated real estate transaction to any person who is not actively licensed as a real estate broker in Idaho or in another state or jurisdiction. The Idaho broker making the payment to another licensed person is responsible for verifying the active licensed status of the receiving broker. This section shall not prohibit payment of a part or share of a commission, fee or compensation by the broker to an unlicensed legal business entity, if:

(a) All of whose the entity's shareholders, members or other persons having a similar ownership interest are active real estate licensees; and

(b) An owner licensed under the broker performed the licensed activities for which the payment is made.

An Idaho licensee may pay any part or share of a commission, fee or compensation received, directly to the buyer or seller in the real estate transaction. However, no commission, fee or compensation may be split with any party to the transaction in a manner which would directly or indirectly create a double contract, as defined in this chapter, or which would otherwise mislead any broker, lender, title company or government agency involved in the transaction regarding the source of funds used to complete the real estate transaction or regarding the financial resources or obligations of the buyer.

(3) Finder's fees prohibited. Any offer of monetary value, by an Idaho licensee, to any person who is not licensed in Idaho or any state or juris-

1 diction, made for the purpose of inducing such unlicensed person to secure
2 prospects to buy, sell, option, or otherwise dispose of an interest in real
3 property shall be considered to be splitting fees with an unlicensed person,
4 and is prohibited.

5 (4) Interference with real estate brokerage agreement prohibited. It
6 shall be unlawful for any person, licensed or unlicensed, to interfere with
7 the contractual relationship between a broker and a client. Communicating
8 a company's relocation policy or benefits to a transferring employee or con-
9 sumer shall not be considered a violation of this subsection so long as the
10 communication does not involve advice or encouragement on how to terminate
11 or amend an existing contractual relationship between a broker and client.

12 (5) Double contracts prohibited. No licensed broker or salesperson
13 shall use, propose the use of, agree to the use of, or knowingly permit the
14 use of a double contract, as defined in section 54-2004, Idaho Code, in
15 connection with any regulated real estate transaction. Such conduct by a
16 licensee shall be deemed flagrant misconduct and dishonorable and dishonest
17 dealing and shall subject the licensee to disciplinary action by the commis-
18 sion.

19 (6) Kickbacks and rebates prohibited. No licensed real estate bro-
20 ker or salesperson shall receive a kickback or rebate for directing any
21 transaction to any individual for financing. A licensee shall not receive
22 a kickback or unearned fee for directing any transaction to any lending
23 institution, escrow or title company, as those practices are defined and
24 prohibited by the real estate settlement procedures act. However, a li-
25 censee legally receiving any fee or rebate from any person providing direct
26 services to either the buyer or the seller in connection with a regulated
27 real estate transaction is required to disclose the licensee's intent to
28 receive such fee, rebate or compensation in writing to all parties to the
29 transaction prior to closing.

30 (7) Compensation from more than one party. No licensed real estate bro-
31 ker or salesperson shall charge or accept compensation from more than one (1)
32 party in any one (1) transaction, without first making full disclosure in
33 writing of the broker's intent to do so, to all parties involved in the trans-
34 action.

35 (8) After-the-fact referral fees prohibited. It shall be unlawful for
36 any person to solicit or request a referral fee or similar payment from a li-
37 censed Idaho real estate broker or sales associate, for the referral of a
38 buyer or seller in connection with a regulated real estate transaction, un-
39 less the person seeking the referral fee has reasonable cause. "Reasonable
40 cause" shall not exist unless:

41 (a) The person seeking the referral fee has a written contractual rela-
42 tionship with the Idaho real estate broker for a referral fee or similar
43 payment; and

44 (b) The contractual relationship providing for the referral fee exists
45 at the time the buyer or seller purportedly referred by such person
46 signs a written agreement with the Idaho broker for the listing of the
47 real estate or for representation by the broker, or the buyer signs an
48 offer to purchase the real estate involved in the transaction. It shall
49 be unlawful for any person including, but not limited to, a relocation
50 company or company with a relocation policy or benefits, to directly or

1 indirectly threaten to or actually reduce or withhold promised or ex-
2 pected employee or customer relocation benefits from a buyer or seller
3 in a regulated real estate transaction based upon a broker's participa-
4 tion in payment of a referral fee or other fee.

5 (9) All fees must be paid through broker. No sales associate shall ac-
6 cept any commission, compensation or fee for the performance of any acts re-
7 quiring a real estate license from any person except the real estate broker
8 with whom the sales associate is licensed. However, if authorized by the
9 broker, a sales associate may:

- 10 (a) Pay all or any portion of the accepted commission, compensation or
11 fee to any other sales associate who is licensed with the same broker; or
12 (b) Accept payment from an unlicensed entity paid by the broker in ac-
13 cordance with subsection (2) of this section.

14 A broker may pay a former sales associate for services performed while the
15 sales associate was actively licensed with that broker, regardless of the
16 former sales associate's license status at the time the commission or fee is
17 actually paid.